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IN THE

Supreme Court of the United States

October Term, 1945
No. 142.

AMERICAN SURETY COMPANY OF NEW YORK, a corporation,

Petitioner,

vs.

PAUL W. SAMPSELL, as Trustee in Bankruptcy of the Estate of Charles B. Stratton, doing business under the fictitious firm names and styles of Temple City Building Materials Co., and Stratton Construction Co.,

Respondent.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

I.

A Surety Who Has Undertaken to Pay a Class of Creditors of a Bankrupt, as Principal, Cannot Share in the Assets of the Bankrupt's Estate by Reason of Any Payment to Some of the Creditors, Until All Claims of the Creditors of That Particular Class Have Been Satisfied in Full.

The petitioner is apparently willing to admit that the basic law as stated herein is true (see Opening Brief of Petitioner, pages 17 and 18). The law stated above is

fundamental,[1] and has been enforced under a variety of circumstances.[2]

The petitioner, while admitting the basic law of suretyship involved, attempts to limit rule to exclude its application to the instant facts, but the authorities relied upon by petitioner fail to justify such exclusion.

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[1]The leading text book on Bankruptcy, Collier on Bankruptcy, 14th ed., Vol. 3 at page 291, states the problem and the answer as follows:

"A merely partial discharge of the principal debt by the surety, be it prior or subsequent to the date of the filing of the petition in bankruptcy, falls squarely under Sec. 57i. This section provides that the surety or other secondary debtor 'shall be subrogated to that extent to the rights of the creditor.' Taken at their face value these words would seem to indicate that the creditor who proved his claim on which the surety made a part payment must share his dividends with the surety. Thus if the claim originally amounted to $1,000 and the surety paid $750 thereon, Sec. 57i conveys the impression that whatever dividends are paid on the $1,000 claim are to be divided between creditor and surety, one-quarter going to the creditor and three-quarters to the surety. The law, however, is otherwise. It allows the original creditor to continue collecting dividends on the *entire* amount of the claim ($1,000 in the previous illustration), until the aggregate of the surety's part payment and the dividends amounts to one hundred per cent of the claim. Then only may the surety assert his right to further dividends based on that part of the original claim to which he was subrogated ($750). Whatever the creditor receives in excess of the principal and interest remaining due him is held by him in trust for the surety. In this respect there is no difference between a surety who is secondarily liable for the full amount of the principal debt and one who limited his liability to a certain maximum (smaller than the principal debt) which he paid in full. Both have to wait until the principal creditor is fully satisfied.

[2]See cases such as *Prudence Realization Corp. v. Geist* (1942), 316 U. S. 89; *American Surety Co. of New York v. Westinghouse Electric Mfg. Co.* (1935), 296 U. S. 133; *Jenkins v. National Surety Co.*, 277 U. S. 258, 267; *United States v. National Surety Co.* (1920), 254 U. S. 73; *Mississippi v. First National Bank of Greenwood* (1933), (C. C. A. 5th), 66 Fed. (2d) 9, 13; *Matter of Hanson & Tyler Auto Co.* (1922), (D. C. N. D. Iowa), 286 Fed. 161; *Matter of Manhattan Brush Mfg. Co.* (1913) (S. D. N. Y.), 209 Fed. 997; *Westinghouse etc. Co. v. Fidelity & Deposit Co. of Md.* (1925), 251 Mass. 418.

The case of *Moise v. Scheibel* (1917 C. C. A. 8th) 245 Fed. 546, is cited (Pet. Op. Br. p. 19) to sustain the contention that the bankruptcy court cannot divert dividends payable from one creditor to another creditor so as to create a lien. However, the quotation taken from this case does not reveal that it involved the attempt of a Referee to give to one creditor the dividend of another merely because the other had promised orally that his indebtedness would be paid. No contract such as is involved in the instant case appears in *Moise v. Scheibel.*[3]

The case of *American Surety Co. v. Bethlehem Bank,* (1941), 314 U. S. 314, cited by petitioner (Pet. Op. Br. p. 19) does not involve any facts analogous or similar to the facts in the case at bar. In the cited case the State of Pennsylvania deposited $135,000 with the bankrupt and obtained a $125,000 surety bond plus a pledge of $12,000 in negotiable bonds. From the bonds, plus dividends from the bankrupt estate, the State collected $66,500, and the surety company paid off the balance owing to the state of $68,500. In the bankruptcy it was attempted to limit the payment of dividends to the surety company to the $68,500 which it had actually paid out, but the Supreme Court held that the surety company was entitled to a

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[3]In *Moise v. Scheibel, supra,* the entire discussion on the question of liens is contained in the following language at page 547:

"We, however, think that the court erred in granting a preference to the claim of the Auto Top Company over that of Moise. They were creditors of the same class, and the evidence does not warrant the establishment of what practically amounts to a lien on the dividends payable to Moise, in favor of the Auto Top Company. The evidence tends to show that Moise promised orally that the indebtedness of the Auto Top Company should be paid; but there is no evidence of facts which would create an estoppel on the part of Moise from receiving his dividends on an equality with the Auto Top Company."

percentage based on the $135,000. The dissenting opinion of Justice Douglas, in which Justice Black concurred, contains an interesting discussion of the rights of a surety, and points out that equitable considerations will frequently bar the surety or reduce his rights.[4]

A reading of petitioner's discussion of the *American Surety Co. v. Electric Co.*, (1935), 296 U. S. 133, *supra* (Pet. Op. Br. p. 19), might tend to give the impression that the Court, in deciding that case, might have indicated limitations concerning the effectiveness of the law governing suretyship, but this is not true. As far as the facts are concerned, they are analogous to the instant case in that the surety company wrote a bond providing that the contractor would "promptly make payment to all persons supplying the principal with labor and materials in the prosecution of the work." (*American Surety Co. v. Electric Co., supra*, at p. 135.) The contractor finished his work but did not make full payment to the persons

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[4]In *American Surety Company of New York v. Bethlehem, supra*, in his dissenting opinion (page 323) Justice Douglas states: "It is ordinarily true that a surety succeeds to all of the rights and remedies of the creditor, including the latter's priority. *Litterdale's Executors v. Executor of Robinson*, 12 Wheat. 594. But that is no inexorable rule. As this court stated in *Memphis & Little Rock R. v. Dow*, 120 U. S. 287, 301-302, 'The right of subrogation is not founded on contract. It is a creature of equity; is enforced solely for the purpose of accomplishing the ends of substantial justice.' In determining whether it would be fair or equitable to allow the subrogation to the full extent of the creditor's rights and remedies, consideration will, of course, be given to the prejudice, if any, suffered by other creditors. But the mere fact that the other creditors will not be worse off than if the surety's principal had pressed the claim is not the sole solvent of the problem. We are not dealing with a mechanical rule. The question remains whether justice requires, or policy permits, the surety to succeed to his principal's privileged position.' Such considerations frequently are a barrier to any subrogation; at other times they may cut down the rights of the surety and give him less than his principal could exact. . . ."

supplying him with labor and materials. Subsequently the contractor became bankrupt, and his trustee in bankruptcy took over. The total amount of the surety bond was $3,940. In the instant case on review before this Court the total amount of the bond was $33,950 [R. p. 87]. The moneys in the hands of the trustee included, in the cited case, the balance of the funds paid by the government, for whom the contract had been performed, amounting to $2,724.23. The surety company paid the total amount of its bond, $3,940, and in the bankruptcy attempted to assert an equal right to dividends as against the materialmen, who had supplied the bankrupt contractor with labor and materials. In the cited case, the surety had paid out the total amount of its bond. In the instant case the surety company had paid out only $6,987.48 of the amount of its $33,950 bond [R. p. 86]. In the cited case, although the total amount of its bond had been paid, nevertheless the Court held that the surety could not participate in any dividend until the materialmen had been paid in full. Surely the surety company was in a better position to complain of harshness or inequity. There, it had paid out the maximum of its possible liability. Here, the loss could have amounted to many times the amount it actually paid. The true applicability of the *American Surety Co. v. Electric Co.* case, *supra*, is obvious when we consider the following language of the Court at page 138:

> ". . . Insolvency supervening, the surety must be postponed in the distribution of the assets to the

remedies of any claimants who are members of the class of creditors covered by the bond."

How could creditors in excess of the amount of the bond, to-wit, $3,940, in that case, be "effectively secured" (Pet. Op. Br. p. 19) unless the rule of law laid down by the Court applies to the same "class of creditors" that the courts below protected as against the claims of this petitioner?

To further explore the inapplicability of the argument of petitioner, let us assume that prior to the bankruptcy the creditors involved in the instant case had filed a claim of lien within the time allowed by law, or had notified the surety and had actually reduced their claims to judgment. If the bond of the surety amounted only to $6,987.48, and this amount had been paid out by the surety, it would then appear that the rule laid down by the case of *American Surety Co. v. Electric Co., supra,* would still bar it from participation until the unpaid creditors had been paid. Nevertheless, as far as the amount of the surety bond would be concerned, the creditors would not have been effectively secured. Obviously, the basic fallacy in the reasoning of the petitioner lies in the fact that it fails to recognize that as soon as labor and materials are delivered to a particular construction job, *the materialmen involved have moneys owing to them and become the class of creditors for whose protection the bond or undertaking was written.*

II.

By Subordinating the Payment of Dividends on the Claim of Petitioner to the Payment of the Claims of the Class of Creditors Covered by Petitioners Bond, the Federal Court Gave Due Recognition to the Applicability of State Statutes.

A search of the records indicates that California is probably the only state which has specifically provided protection for persons in the category of the materialmen, etc., covered by petitioner's bond, by making such provision an actual part of its Constitution. Article XX, Section 15, of the Constitution of the State of California, adopted in 1879, is as follows:

> "Mechanics, materialmen, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the legislature shall provide by law, for the speedy and efficient enforcement of such liens."

We note with interest the apparent inconsistency appearing from the citations by the petitioner, particularly on pages 10 and 11 of its opening brief (footnotes 3 and 4). Under note 3, alleged to be a fair summary of the California case law, it is stated that mechanics' liens are entirely of statutory creation and that before a valid lien may arise the claimant must have complied with the statute, citing in support thereof 17 Cal. Jur. Sec. 50 (Mechanics' Liens). This statement of purported law is obviously erroneous, in view of the fact that the right of lien arises from the Constitution itself, and this latter conception of the law is then adopted at 17 Cal. Jur. on Mechanics' Liens, Section 68, strictly contrary to the purport

of the quotation from Sec. 50. (See footnote 4, Pet. Op. Br. p. 11).

In other words, construction of the bond in the instant case, if it is to be construed in connection with the laws governing it, as contended by petitioner, must not only take into consideration the provisions of the Code of Civil Procedure, which merely reflects the remedy given materialmen, but must likewise include therein full recognition of the Constitutional rights granted citizens of the State of California.

> ". . . Liens of mechanics and materialmen are protected by section 15, article XX, of the state constitution, and, being remedial in character, are to be liberally construed with a view to effect the object of the constitution and promote justice."[5]

Petitioner has made the bald assertion in its brief that unless all steps have been complied with as required by the Code of Civil Procedure, prior to bankruptcy, the bankruptcy Court cannot recognize a materialman as secured by an undertaking written for his protection. Although it is the contention of respondent that this problem does not exist in the instant case on review, because the taking of remedial steps has to do primarily with the owner of the property and not with the surety contractor and his surety, nevertheless, cases such as *Cutler-Hammer, Inc., v. Wayne* (1939), (C. C. A. 5th) 101 F. (2d) 823, point out the fallacy of the contention of petitioner.

A rather novel argument is presented by petitioner at page 8 of its brief, wherein it is asserted that the bond

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[5]*Hammond Lumber Co. v. Barth Invest. Corp.* (1927), 202 Cal. 601, at 605.

of the surety is a substitution of liability for the owner of the property and not for the contractor. No cases are cited to support this contention, and it would not appear that any logically reasoning Court could sustain such a view, after considering the pertinent facts.

In the first instance, it is always of assistance to look to the documents in question in order to ascertain the intention of the parties. The application for the bond in the present case describes the bankrupt, who was the contractor, as the "Indemnitor" and includes the following language:

> "IV. That the suretyship is for *the special benefit of the Indemnitor* (italics ours) and the Indemnitor's property now owned or hereafter acquired and the income and earnings thereof, from all of which the Surety shall be entitled to indemnity; and the Indemnitor represents that it is specially and beneficially interested in the award or contract, the continuance thereof and in the suretyship." [R. p. 64.]

The bond itself refers to the bankrupt as the principal, and contains no language for the direct protection of the General Electric Company (either the owner or lessee of the real property upon which construction was erected) [R. pp. 86, 87, 88]. It is obvious from the terms of the application and the bond itself that the purpose of the bond was to make certain that the contractor would pay the claims in full of all persons performing labor or furnishing materials to the job. The only effect at law that the filing of this bond had was that it limited the obligation of the owner of the property to the payment of the total contract price rather than the payment of all claims including those upon contracts which he had not created. It was the contractor who paid the surety com-

pany its premium, and who likewise furnished the collateral which was obtained by the surety company in connection with the writing of the bond. There was no direct relationship between the surety company and the owner or lessee of the property.

The true issue in the instant case is whether or not the federal courts below correctly enforced the terms of the bond filed by petitioner in connection with the applicable laws of the State of California. Nothing in the cases cited by petitioner, or in its argument (Point No. 2, commencing on page 15 of its opening brief) justifies any reconsideration of the ruling of the courts below.

In the case cited (Pet. Op. Br. p. 16) by petitioner of *Security Mortgage Company v. Powers* (1928), 278 U. S. 149, we find at page 154 recognition of the rights and application of the bankruptcy law as follows:

> ". . . The construction of the contract for attorney's fees presents, likewise, a question of local law. See *Farmers Bank v. Fed. Reserve Bank*, 262 U. S. 649, 660. Whether the liability is, under the circumstances, enforceable against the proceeds of the sale, raises federal questions peculiar to the law of bankruptcy . . ."

Of a similar tenor is the case of *Board of Trade of City of Chicago v. Johnson* (1923), 264 U. S. 1.[6] (Pet. Op. Br. p. 16.)

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[6]In *Board of Trade of the City of Chicago v. Johnson*, *supra*, at page 10, the following language is found: "Congress derives its power to enact a bankrupt law from the Federal Constitution, and the construction of it is a federal question. Of course, where the bankrupt law deals with property rights which are regulated by the state law, the federal courts in bankruptcy will follow the state courts; but when the language of Congress indicates a policy requiring a broader construction of the statute than the state decisions would give it, federal courts cannot be concluded by them. *Board of Trade v. Weston*, 243 Fed. 332."

The case of *Malott & Peterson v. Street* (1925) (C. C. A. 9th) 4 F. (2d) 770 (cited at page 17 of petitioner's brief), reflects no inconsistency in the decisions of the 9th Circuit Court of Appeals, because in the *Malott* case there was no problem of suretyship involved. The Circuit Court found that the claimant had not attempted to enforce any lien rights, but had sued merely for moneys owing to it and had levied judgment and obtained payment within four months preceding bankruptcy of a sub-contractor defendant, and thereby the moneys obtained on the judgment were set aside as a voidable preference.

The general attitude of the California courts with reference to the limitation of the rights of a surety are recognized in many cases, and is actually but a reflection of the general law applicable to sureties.[7]

Under the Constitution of the State of California, Article XX, Section 15, the creditors favored in the instant case by the ruling of the courts below, became entitled to and had a lien upon the property improved by their efforts and materials. The bond in question specifically provides that it is written to protect any and all persons furnishing materials or work or on the premises

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[7]See *Meyers v. Bank of America* (1938), 11 Cal. (2d) 92, at page 97, as follows: ". . . Otherwise stated, where by the application of equitable principles, a surety has been found not to be entitled to subrogation, an assignment will not confer upon him the right to be so substituted in an action at law upon the assignment. His rights must be measured by the application of equitable principles in the first instance, his recovery being dependable upon a right in equity, and not by virtue of an asserted legal right under an assignment. . . ."

in question. The language of the bond itself defeats petitioner's argument.

> "Now Therefore, if the above bounden Principal shall pay or cause to be paid in full the claims of all persons performing labor upon or furnishing materials to be used in doing the work described in said contract or in any modification thereof, then this obligation shall be void; otherwise to remain in full force and effect." [R. p. 87.]

The class of creditors for whom the bond was created, therefore, is all persons performing labor upon, or furnishing materials to be used in doing the work described in the contract. No contention is made by petitioner that the creditors do not fall in this class. The time within which suit could have been filed against the bankrupt contractor had not lapsed when bankruptcy intervened, and therefore timely filing of claims in the bankruptcy proceedings by the three creditors involved was all the law required them to do. The taking of any statutory steps to enforce a mechanic's lien is a condition which merely affects the enforcement of the rights of the creditor against the property involved. Rights which are granted to a creditor by the express provisions of the Constitution of the State of California, and cannot be construed in any other light than that used in construing cases enforcing statutes of limitations, which likewise do not go to the merits of a claim, but merely affect the enforcement of certain remedies.

Once the class of creditors as creditors is established, analyzing the bond in question can lead to no other con-

clusion than that the surety is subordinated to the payment of the claims of such creditors when bankruptcy intervenes. There is no revival of an expired remedy, as petitioner argues, without complying with state law. There is only the enforcement of a fundamental constitutional right as against a surety who has expressly assumed an obligation.

Petitioner would have the Court believe that the creditors of the bankrupt are being given unwarranted protection. A surety was hired by the bankrupt and the surety exacted the premium and collateral which it felt was necessary to protect itself against the acts of the bankrupt and the possibility of his going into bankruptcy. The bankrupt was the contractor and principal with whom the surety dealt — not a stranger to the transaction, such as the owner or lessee of the property. The surety could have been liable for a much larger amount, but is not satisfied with the limitation of its liability, as shown by its general claim. No, the surety seeks to obtain money from the estate of the bankrupt contractor on a parity with and to the detriment of unpaid creditors of the class for whose protection the surety wrote its bond. The Court will note that the creditors who are protected by the ruling of the referee, below, are only those creditors who came within the class covered by the bond. Towards this class of creditors the bankrupt and the surety stand shoulder to shoulder, and the surety is not entitled to participate in any dividend until the terms of its undertaking have been fully performed by payment, either from the estate of the contractor or from the surety.[8]

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[8] *American Surety Co. of New York v. Westinghouse Electric Mfg. Co.* (1935), 296 U. S. 133.

Conclusion.

An analysis of the arguments presented by both the petitioner and by the respondent should indicate clearly that there is no question of the Circuit Court of Appeals having failed to enforce and recognize State law. Actually, the only issue involved arises as part of the routine administration of a bankruptcy estate, and was correctly resolved by the decisions of the lower federal tribunals.

Wherefore respondent prays that the judgment be affirmed, with costs to the respondent.

Respectfully submitted,

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Of Counsel:
MARTIN GENDEL,

Los Angeles, California.
January, 1946.

SUPREME COURT OF THE UNITED STATES.

No. 142.—October Term, 1945.

American Surety Company of New York, Petitioner, *vs.* Paul W. Sampsell, Respondent.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 25, 1946.]

Mr. Justice Black delivered the opinion of the Court.

This case raises questions concerning the equitable power of a federal bankruptcy court to subordinate claims of some creditors to those of others. The creditors are a surety entitled to subrogation for payments upon its surety bond and laborers and materialmen for whose benefit the bond was executed.

Stratton, now in bankruptcy, made certain alterations in factory buildings located in California. In connection with this project Stratton as principal, and the petitioner, American Surety Company of New York, as surety, executed a joint statutory bond for $39,500, by which they bound themselves to pay all persons furnishing materials for, or performing work on, the job. The bond strictly conformed in all respects with requirements of the California law governing laborers' and materialmen's liens and was filed and recorded as provided by Section 1183 of the California Code of Civil Procedure. Parts of the bond's language incorporated portions of Sections 1183 and 1187 of the California Code of Civil Procedure which provide that "no action" on a recorded bond may be maintained unless within a specified statutory period a mechanics lien claim shall have been filed or the surety shall have been given notice of the unpaid claim.

Because of financial difficulties Stratton was unable to pay all the laborers and materialmen. Some of them, with claims aggregating $6,724.78, filed lien claims and gave notice within the statutory period and the surety paid their claims in full. Others failed to file claims or give the required notice and the surety did not pay them.

Stratton was later adjudged a bankrupt. The petitioner surety company filed a claim for the money it had been compelled to

expend in payment of the materialmen and laborers who had given the statutory notice. Its claim rested on an agreement by Strattor to indemnify it and on the equitable doctrine of subrogation. Three of the materialmen and laborers who had failed to give notice also filed claims totalling $1,336.11 owed them for materials furnished and work performed. The referee allowed all of these claims including that of the surety company as general claims in bankruptcy. Upon motion of the respondent trustee, the referee subordinated the petitioner's claim to that of the unpaid laborers and materialmen, holding that " . . . as long as there are creditors of the class for whose benefit the original surety bond was written . . . the surety company cannot participate in dividends from the estate until these creditors have been paid in full." Thus under the order the three unpaid laborers and materialmen were to receive in addition to dividends on their own claims a pro-rata share of dividends otherwise due the petitioner until they had been paid in full or the petitioner's dividend had been exhausted. The District Court sustained the referee's order, 53 F. Supp. 131 and the Circuit Court of Appeals affirmed, 148 F. 2d 986. We granted certiorari because of petitioner's contention that the order subordinating its claims failed to take into consideration contractual rights of the surety under state law.

Petitioner argues that because the state statute incorporated into the bond requires laborers and materialmen either to file a lien claim or notify the surety within a specified period after completion of the job, the referee erred in subordinating the surety's claim to those of the laborers and materialmen who had not complied with the statutory notice provision. The rights of those creditors, it is argued, had never, under California law, been more than inchoate, and even as such had been completely extinguished prior to the bankruptcy proceedings because of a failure to give the statutory notice. Consequently, the petitioner urges, these claims ought not to be preferred in a federal bankruptcy proceeding. We think this contention is without merit and that the order of the referee was correct.

We recently had occasion to reiterate that federal bankruptcy law, not state law, governs the distribution of a bankrupt's assets to his creditors. *Prudence Realization Corp.* v. *Geist*, 316 U. S. 89, 95. See also *Pepper* v. *Litton*, 308 U. S. 295, 303-306; *Pru-*

dence Realization Corp. v. *Ferris*, 323 U. S. 650, 653. True, we stated in both *Prudence* opinions that the federal law governing distribution of a bankrupt's estate should be applied with "appropriate regard for rights acquired under rules of state law". But the extent to which state law is to be so considered is in the last analysis a matter of federal law. Here the referee's subordination of the surety company's claim did not only follow the well-established rule under federal bankruptcy law, but also achieved a result in complete harmony with California's aim expressed by both its Constitution[1] and statutes, of providing materialmen's and workers' claims with extraordinary security.

The established federal rule of distribution in a situation such as the one before us was clearly set forth in *American Surety Co.* v. *Westinghouse Electric Manufacturing Co.*, 296 U. S. 133. In that case the surety company had paid out to various creditors the full amount of the statutory surety bond and filed a claim in the bankruptcy proceeding based on those payments. The surety company argued that since its full liability had been extinguished, it should be permitted to share ratably with all the bankrupt's general creditors. That contention was rejected. The Court pointed out that while liability of the surety company had ended, controlling equitable principles forbade the surety from sharing the bankrupt's assets on equal terms with any creditors who were members of the class its bond had been given to protect. The rule stated by the Court was that where insolvency supervenes, a surety's claim is postponed until payments in full are made to all "claimants who are members of the class of creditors covered by the bond".

The petitioner attempts to distinguish this case by arguing that the materialmen and workers to whose claims its claim has been subordinated were not "covered by the bond". This contention rests on the claim that according to the construction of the applicable state statutes by the California courts the bond does not protect materialmen and workers who, as the ones here involved,

[1] Article XX, Section 15, of the Constitution of the State of California is as follows:

"Mechanics, materialmen, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished and the legislature shall provide by law, for the speedy and efficient enforcement of such liens."

have not complied with statutory filing and notice provisions. While this claim as to California law is denied by the respondent we need not resolve the dispute. For even if petitioner's claim as to California law is correct, the creditors in the *Westinghouse* case were certainly no more protected by that bond after the surety had paid out the full amount, than the materialmen and laborers are said to be protected here after the time for notifying the surety had expired. The phrase "covered by the bond" as used in the *Westinghouse* case did not have the meaning petitioner ascribes to it but had reference rather to the class of creditors for whose benefit the statutory bond was executed. All materialmen and laborers who contributed to Stratton's job clearly come within that class. The basic reason for the rule announced in the *Westinghouse* case applies with equal force here. The bond was intended to protect materialmen and laborers who worked on the job so that they would not have to bear the risk of Stratton's insolvency. But for his insolvency and bankruptcy these laborers and materialmen would have been able to recover from him the money due them, no matter what their rights against the surety might have been. Consequently the surety should not by claiming under subrogation or indemnity for money paid to some of the creditors for whose benefit the bond was intended, be allowed to reduce the share of the bankrupt's assets due to other creditors whom the bond also was intended to protect from insolvency. For this would tend to defeat the very purpose for which the bond was given and therefore cannot be permitted under the equitable principles governing distribution of a bankrupt's assets. *Prudence Realization Corp.* v. *Geist*, *supra*, at p. 96.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.